

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
SHIH, CASSANDRA, : Docket #1:18-cv-05495-
 : JFK-BCM
 :
Plaintiff, :
 :
- against - :
 :
PETAL CARD, INC. et al, : New York, New York
 : November 9, 2021
 :
Defendants. :
 : STATUS CONFERENCE
----- :
 :

PROCEEDINGS BEFORE
THE HONORABLE JUDGE BARBARA C. MOSES,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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August 31st, the substantial completion date for defendants. And so we're still arguing about it now after twice they refused --

THE COURT: Mr. Froot, what are you arguing to me exactly? I'm ready to hear about the CAP table.

MR. FROOT: Right. That these are examples of documents that have previously been produced for other time periods that have all of this information in them that is now being redacted. And we were only making that comparison because whatever strictures apply to defendants applied when they produced previous documents of the same kind, just with different dates on them.

THE COURT: So your point is they shouldn't be doing more redacting under present counsel than they were doing under prior counsel?

MR. FROOT: Yes.

THE COURT: Thank you.

Mr. Blaisdell.

MR. BLAISDELL: Thank you, your Honor. So, yes, the CAP tables that we provided as examples and submitted to the Court are examples of an issue that unfortunately has presented itself in the last several productions by defendants, and it is that they have essentially helped themselves to redactions that are based on their unilateral

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views of responsiveness --

THE COURT: Right, well, this is one of these perennial issues. In every case that lasts for more than ten minutes, at one point the plaintiffs complain that the defendants are redacting for reasons other than privilege; and then at another point, the defendants complain that the plaintiff is redacting for reasons other than privilege. And both point out that that's not permitted. It's true. It's generally not permitted --

MR. BLAISDELL: Yes, your Honor.

THE COURT: -- unless there's an agreement or a court order that says you can.

MR. BLAISDELL: Yes, your Honor. And we're actually at the point where we can cite defendants for that point, which I suppose is that we reach in probably most cases before your Honor.

THE COURT: All right, so I'm looking at your Exhibit 6. And I understand that these documents were filed under seal, so we won't delve into the substantive content. But I am looking at your exhibit number 6, which doesn't seem to have -- it's an excerpt from the CAP table -- it doesn't seem to have any redactions. I am looking at your Exhibit 7, which seems to be all redaction except for one line -- well, actually, one line on each

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page. And I am looking at your Exhibit 8. What's wrong with Exhibit 8?

MR. BLAISDELL: So Exhibit 8 is actually the example of how Exhibits 6 and 7 should look.

THE COURT: Should look.

MR. BLAISDELL: It shows you the amount of information that -- and bear in mind that this is as of 2017, the CAP table --

THE COURT: So you want to see all the lines and not just the Endicott and Gross lines?

MR. BLAISDELL: That's correct. And I just want to add one further point of clarification, your Honor, which is that in Exhibit 6, which your Honor said is not redacted, it is true that there are no sort of blacked-out redactions on the page --

THE COURT: Oh, you think it's been redacted in white, not in black?

MR. BLAISDELL: That's what it appears, given the fact that we know there were not only two investors in the company as of 2021, and the only two investors that are listed in this are Mr. Endicott and Mr. Gross, who are the same two that are unredacted in the CAP table that was produced at Exhibit 7.

And so what it appears happened here -- and,

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again, perhaps defendants can explain this to your Honor -- but what appears to have happened here is that the remaining entries have been redacted in white, which I think as your Honor's question sort of suggests, is a more problematic practice because --

THE COURT: Because you can't tell.

MR. BLAISDELL: -- we're not even aware -- sorry, your Honor -- not even aware of what has been removed from the document.

THE COURT: And the difference between these CAP tables, besides the degree of redaction, is simply the date on them; is that right? Exhibit 6 is dated March 19 of this year; Exhibit 7 is dated March 26th of last year. And Exhibit 8 -- what is Exhibit 8 dated? -- October of 2017.

MR. BLAISDELL: Your Honor, I think there are further differences between these documents. I think there is somewhat more detail in Exhibits 7 and 8, which may -- or, sorry, 6 and 7 -- which may reflect the fact that they're from a later period in time. But all of this is about investors' holdings in Petal, just so we're clear, the amount of shares, the different categories of shares --

THE COURT: Right. And besides the fact that you asked for it and you got it at one point, why do you need the names and the details of investors other than the

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defendants?

MR. BLAISDELL: Well, your Honor, we're in a situation where we're trying to piece together a mosaic of information, which includes the amount of money that was paid by these investors for the particular shares. And as your Honor I'm sure well knows, different sets of shares have attached to them different sets of rights. There may be a liquidation preference; there may be a number of issues that we need to work through in connection with our experts in order to determine, you know, sort of the proper value of the entire enterprise. And that's going to include understanding who the investors are, where they fall in the CAP table and, you know, what portion of the company that they own and the rights and benefits that are associated with those stakes.

THE COURT: Okay. Whose issue is this for the defendants?

Ms. Barnaby, just let me ask you quickly, because as you may have seen out of the corner of your eye, for the first time in about a year and a half, I actually have two sets of lawyers for two different cases coming into the courtroom, and I don't want to get behind schedule, how come you -- and by "you" here I mean your clients -- produced at Exhibit 8, for example, what appears to be an

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unredacted detailed CAP table fully diluted showing the names and data of all of the investors and then started redacting?

MS. BARNABY: So we were not part of that original decision. It is possible, from our review on the documents, that it was in fact a mistake that that was ever produced. But I also note that it is from a --

THE COURT: A mistake why?

MS. BARNABY: That it's possible -- why is it possibly a mistake?

THE COURT: Yes.

MS. BARNABY: Because --

THE COURT: It was a mistake not to redact for matters --

MS. BARNABY: Not to have redacted it.

THE COURT: -- other than privilege?

MS. BARNABY: It was a mistake to have produced an unredacted -- that the position of the client was to redact everything and that, nonetheless, an unredacted document got out -- was produced.

THE COURT: What in the Federal Rules of Civil Procedure or the orders of this Court permitted you, either then or now, to redact the names of investors other than the individual defendants?

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MS. BARNABY: Your Honor, there are highly sensitive issues here that we think this is well beyond the proportional information in this case. They have --

THE COURT: But it's too late --

MS. BARNABY: -- the stock purchase agreements --

THE COURT: -- it's too late for that argument.

MS. BARNABY: I cannot point to a specific rule that -- as we all know, as your Honor has already said, there is not a specific rule that permits redactions. The plaintiff has done redactions. We similarly did redactions --

THE COURT: We're not here arguing about the plaintiff's redactions; we're arguing about specific financial documents which the plaintiffs sought and which you either agreed or I ordered you to produce -- I honestly don't remember whether a motion was required for the CAP table or not -- I don't think so --

MS. BARNABY: No.

THE COURT: -- which you produced unredacted. Had you produced it redacted a year ago -- "you" meaning, again, the client -- I'm sure there would have been motion practice at the time. Plaintiff, obviously, did not believe that future iterations would be redacted, since the original production was not redacted. And now, all of a

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sudden, redactions.

MS. BARNABY: I want to clarify a point, your Honor. Prior counsel and the client redacted in the first production of CAP tables. There were multiple tables produced; some of them were redacted. It turns out that there was one that was not.

THE COURT: One that was not. And that's Exhibit 8?

MS. BARNABY: Yes. So it is not correct to say that Alston & Bird came in and started applying new redactions on the CAP tables. Redactions had been applied before, so that's why --

THE COURT: You're telling me that Exhibit 8 is just a rogue?

MS. BARNABY: Correct.

THE COURT: And that all of the other CAP table iterations produced before it and after it were redacted to show only the individual defendants?

MS. BARNABY: That was the methodology applied, correct.

THE COURT: Mr. Blaisdell, is that true?

MR. BLAISDELL: Your Honor, I don't believe it is. But, as your Honor already recognized, one of these documents was redacted with white text, which may have

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not --

THE COURT: I didn't recognize that. You told me that. I can't tell if it's true or not.

MR. BLAISDELL: Sorry, your Honor. As we discussed, there's the possibility out here that one of the documents that is before your Honor was redacted with white text, which obviously makes it much more difficult to determine, you know, what has been removed from the document.

But I do think -- I want to avoid a situation where we're just having a discussion about these CAP tables. Defendants have helped themselves to redactions on 40 or 50 --

THE COURT: Yes, but Mr. Blaisdell, it's really late in the day. Document production was supposed to be substantially completed months ago. If you were having these problems with redactions, whether in some of the CAP tables or all of the CAP tables or in documents other than CAP tables and you brought them to my attention for the first time now, you're going to be out of luck.

MR. BLAISDELL: Well, your Honor --

THE COURT: If it's a new problem because nothing was redacted up until the most recent production and now all of a sudden you're shocked to find that everything's

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been either whited out or blacked out, other than the two named defendants, you're not too late and you have my attention. But if this has been going on for months and months and months and months, with a couple of rogues slipping through like Exhibit 8, and you're complaining to me about it now, I'm going to rule you out of time.

MR. BLAISDELL: Your Honor, the --

THE COURT: And I don't know which it is.

MR. BLAISDELL: So, your Honor, the document produced with Bates number 136290 was contained in defendant's October 20th production.

THE COURT: Give it to me by exhibit number, please, not by its production number, if you can.

MR. BLAISDELL: Yes. That is the document that was attached as Exhibit 7 that contains the large volume of black redactions. It was produced --

THE COURT: And that was produced recently.

MR. BLAISDELL: -- on October 20th.

THE COURT: Right.

MR. BLAISDELL: And that is the document that I believe brought this to our attention, with the, you know, heavy redactions, as your Honor can see. And --

THE COURT: But I just heard from your opponent that it's not an outlier, that defendants were in that

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habit of redacting all along, and that the outlier is Exhibit 8, which is unredacted.

All right, it's five of 12.

MS. HENDON: Eleven.

THE COURT: Ladies and gentlemen, five of --

MS. HENDON: Yes, sorry, 12 -- sorry.

THE COURT: -- five of 11. I have another case coming in at 11. I did set my clock back, I promise.

So with respect to this issue of redactions, you are going to go back to your offices or go up to the cafeteria, which is now open. You can sit down and have a cup of coffee, and you are going to meet and confer about this precise issue. And you can guess what's coming. If you can't agree, I'll take it in the form of a joint letter, same rules, by next Friday. But that joint letter has to tell me -- excuse me -- a week from today. All of these are due a week from today, not next Friday. But that joint letter has to tell me, with examples, please, whether this is a speck of white in a sea of black or a speck of black in a sea of white, by which I mean what was the practice back in June, July, August; did this over-redaction issue about which plaintiff is now complaining suddenly crop up in October, in which case you have my attention, Mr. Blaisdell; or has it been going on for